Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

International Settlements Policy Reform	)	
International Settlement Rates	)	IB Docket No. 02-324
	)	IB Docket No. 96-261
	)	
Reply Comments of Telecom Italia on the	)	
Notice of Proposed Rulemaking FCC 02-285	)	

Date: January 14th 2003
Filing Party: Telecom Italia

Telecom Italia, a leading provider of communication services around the world, respectfully submits the following comments in response to the Commission's October 2002 Notice of Proposed Rulemaking, FCC 02-285.

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A. Presentation of Telecom Italia

The Telecom Italia Group is ICT leader in Italy and, principally through TIM, a major player on the world stage. The Group responds to market challenges by leveraging technological innovation and focusing on the customer, cost control and operating efficiencies.

The main shareholder of Telecom Italia is Olivetti, a public traded company on Italian Stock Exchange, owning 54, 95% of its ordinary shares. Recently, before the end of 2002, the Ministry of Economy and Finance dismissed, through a public transaction, its 3,46% directly owned in Telecom Italia.

It should be noted that the golden share, even though still formally owned by the Government, is under exam in order to be eliminated. In any event any attempt by the Government to use it at the present conditions would be in conflict with community law.

Furthermore, the domestic administrative procedure aimed at eliminating this instrument is in course, as declared by the Italian Ministry upon the dismissal and, in any way, after the sale of the Government's stake the only theoretical exercise of the golden share would represent a contradiction.

Telecom Italia closed its 2001 accounts with revenues of 30.8 billion euros (22.4 billion euros in the first three quarters of 2002) and EBITDA of 13.6 billion euros (10.4 billion euros in the first three quarters of 2002).

Building on its technological leadership, which represents a real competitive advantage in catering to customer needs, the Group is oriented towards consolidating its lead position in the domestic market while reinforcing TIM's presence outside Italy.

The Group currently supplies more than 27.1 million fixed-network lines and 24.6 million wireless lines in Italy (at 30 September 2002); Internet access unit Tin.it has almost 2 million active users (30 June 2002). TIM Group wireless lines outside Italy total 12.7 million (30 September 2002).

Telecom Italia's international operations are currently deployed in 19 countries in wireline and wireless telephony, Information Marketing and directories. The Group's focus is predominantly on wireless business, particularly in the Mediterranean Basin, in countries such as Greece and Turkey, and, in particular, in Latin America, where TIM has launched Brazil's first GSM market – the latest step in the Group's priority international growth project: the first pan-South American GSM network.

B. Comments of Telecom Italia in response to the FCC consultation

1. Comments on the status of the US international market, including gathering information on the development of resale "spot" markets, emergence of IP telephony, and growth of international wireless roaming arrangements.

The US international market has been undergoing significant changes in the past year due to the entry into this market of most of the Bell companies which have and are progressively obtaining the authorization to provide long distance services in a growing number of states, therefore aiming at increasing the level of competition for both inbound and outbound international calls. A similar trend is taking place in many other countries like European countries in which the liberalization process has now been fully deployed and the presence of multiple carriers accompanied by regulation which ensures cost orientation for interconnection services offered by incumbent operators and non discrimination between national and international carriers has led to a significant reduction in the cost of terminating for example US originated calls. This has led to a decreasing role of traditional bilateral agreements and corresponding increasing role of ISR traffic which typically ensures lower charges, also coadiuvated by the evolution of IP telephony which in some cases can ensure similar quality levels of circuit switched voice services.

In general, the liberalization process in Europe has been completed and is producing significant effects in terms of possibility of choice between operators and reduction of tariffs. The prices for international calls has been reduced by over 40% since 1998 and in some countries by 65%[1]. Since liberalization, there are more than 900 licenced operators in Europe therefore representing alternatives to the historical incumbent operator for the termination of international calls. A complete and updated photograph of the status of liberalization in EU Member States can be found in the European Commission's 8th Report on the Implementation of the Telecommunications Regulatory Package.

[1] Source: European Commisssion 8th implementation report on the Implementation of the Telecommunications Regulatory Package, http://europa.eu.int/information_society/topics/telecoms/implementation/annual_report/8threport/index_en.htm

2. **International Settlements Policy: whether the option of removing the regulatory restrictions of the ISP would promote greater competition while protecting the public interest on US international routes and possible safeguards that may apply to routes form which we eliminate the ISP such as standards for reimposing the ISP the applicability of the "No special concessions" rule and the maintenance of filing requirements to monitor compliance with the ISP and accounting rate policies. Is it appropriate to adopt transition periods or sunset dates with any proposal.**

   The International Settlements policy has made a positive contribution to the reduction in prices of international accounting rates and we therefore believe it should be maintained and updated only for those countries with liberalization processes still not completed, and in which bypass opportunities are limited. This would ensure a level playing field in these countries, and provide consumers with the best possible rates in an arena where rates could be artificially inflated to bolster a country's foreign exchange supply.

3. **International Simple resale and Benchmark policies: comments on the next phase of the Commission's ISR and benchmark policies and what, if any actions the Commission should consider including revising the benchmarks policy to encourage more cost-based settlements rates.**

   As already mentioned in many liberalized countries the role of international settlements arrangements is decreasing in favor of ISR arrangements which have reduced the costs of termination of international calls significantly in a relatively short period of time and in compliance with the main regulatory provisions in place with regards to mobile prices (ie. non discrimination, cost orientation and in general an alignment to national interconnection charges). In these countries the actual level of rates is well below the benchmarks contained in the last *FCC benchmark order*. The benchmark order should therefore be updated in order to reflect the reduction trend that has occurred in these past two years.

4. **Foreign mobile Termination rates: whether foreign mobile carries may be engaged in abused of market power to the detriment of US consumers and competition in their setting of charges for mobile termination of US international calls. To the extent such foreign mobile termination charges may artificially inflate US carriers' cost of providing international service and increase consumer calling prices, we seek comment on ways to address the issue and better inform consumers.**

   In most countries with developed fixed communications infrastructure such as Europe, the cost of originating and terminating mobile calls has been higher with respect to the cost of transporting calls on the fixed network (as opposed to some developing countries in which the cost of mobile network is lower than the fixed network). This is reflected in the higher retail rates of calls from a mobile network with respect to the retail rates of calls from a fixed network. This is also reflected in the interconnection charges of terminating calls on a fixed network vs the interconnection charges of terminating calls on a mobile network in countries with a "calling party pays" regime since the call reflects the underlying costs. There are a number of conceptual and analytic explanations for such a difference. Suffice it to say that mobile network technological progress entails relentless investments to be made in order to cope with constant service upgrade across various mobile networks generation. As a consequence, economic cost estimates may be found higher than accounting costs, as documented by OFTEL[2].

   Whatever the level of the charges involved, EU Regulation enforces a non-discrimination rule between interconnection rates for call termination that mobile carriers can charge regardless of whether the call is originated nationally or internationally.

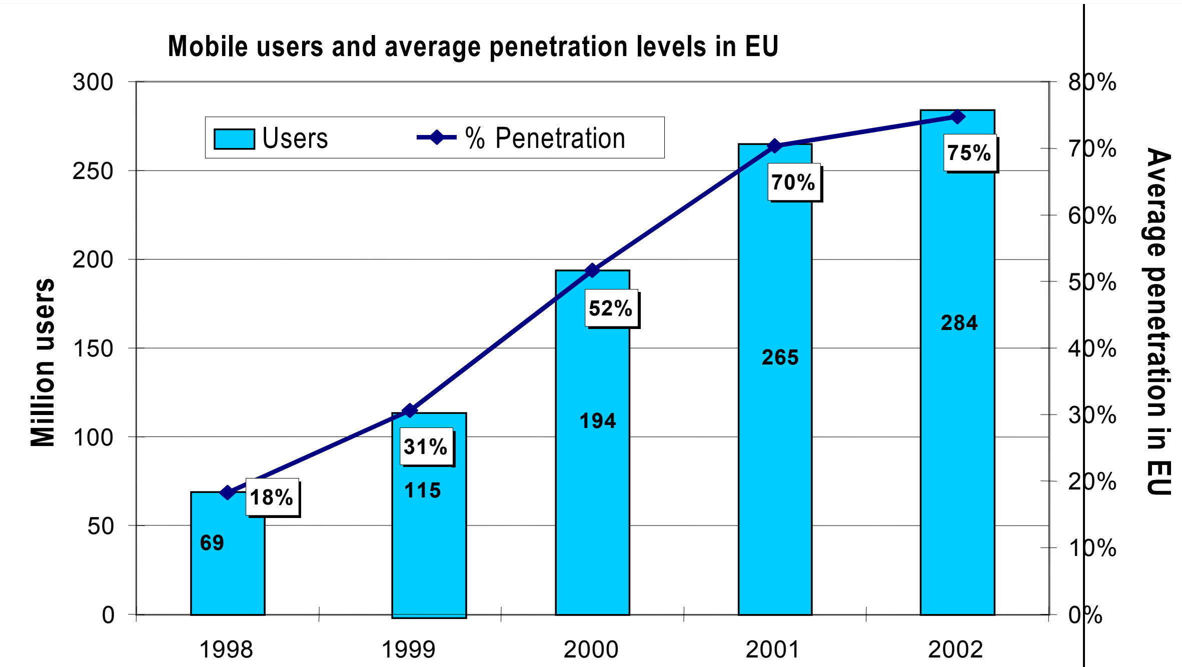
   The same situation of differentiation of mobile termination tariffs vs fixed tariffs occurs in most Latin America`s countries of Telecom Italia`s presence, where a lower level of penetration (hence smaller volumes for economies of scale and higher unit costs) and less comfortable geotypes can be invoked with respect to Europe.

   Despite sensible differences among regulatory regimes in most of the considered countries, non discrimination of mobile termination charges among national and international services is granted everywhere, except in the case of serious influence exerted by macroeconomic effects (ie currency devaluation).

[2] Office of Telecommunications (2002), Accounting depreciation cost based estimates, letter to Competition Commission, 3 May 2002. Available at http://www.oftel.gov.uk/publications/mobile/ctm_2002/account_let0502.pdf

If the FCC consultative process is implicitly questioning the mobile pricing model of Calling Party Pays, it has to be borne in mind that:

- this model has lead to recognized advances in mobile penetration, often crucial to involve the biggest possible number of users. The graph below shows the penetration level of mobile users in Europe where a CPP regime has been implemented since the beginning, whereas the mobile penetration level in the US at the end of 2001 is estimated at around 47-49%[3].



Source: European Commission 8th Implementation Report on the Telecommunications Package

- the adoption of such a model is contained in many national regulatory rules, hence any attempt to quest for its modification for alleged anticompetitive effects should be submitted to competent international bodies, such as WTO, where appropriate instruments exist to solve those controverted matters.

a) In interconnection regimes such as the US, the cost of using the mobile network is typically higher than the cost using a fixed network but since there is a "receiving party pays" arrangement, mobile users pay the extra cost for both outgoing and incoming calls from the fixed network. Actually, it can be argued that if a call is made from a mobile to a mobile phone of the same network, the mobile operator is remunerated twice for the same call and therefore the US mobile customer is penalized incurring in higher costs. Therefore, if we apply a non discrimination rule,

[3] Source Telephia

if the mobile user in the US pays for incoming calls, it should not discriminate on whether the call is originated in the US or abroad. It is true that the mechanisms of the "receiving party pays" interconnection cause US mobile customers to pay for the extra cost of terminating a foreign originated call to a US mobile phone, but this is also true in the case of a call originated in the US. Therefore, if the FCC is concerned about the higher costs incurred by US customers, it should first act on the national market by removing these distortions in order to be coherent.

b) In Europe, the costs of interconnection on the fixed and mobile networks are regulated by National Regulatory Authorities which have the power to impose reductions on the rates proposed by dominant fixed and mobile operators. In Latin America, NRA's powers over economic conditions for Interconnect offers are often symmetrically applied to all market operators, regardless of their market power. This has led in the past few years to a steady trend of reduction in interconnection charges. While until recently, focus of EU regulation had been on fixed incumbent operators, the mobile termination issue is becoming more and more relevant as the growth of mobile telephony in terms of subscribers has in most cases equaled or exceeded the number of fixed lines. In the past year, most European NRAs have taken action or are planning to take action in reducing mobile termination charge. As an example, in 1999, the two major UK mobile operators (Vodafone and BT Cellnet) were required by Oftel (UK NRA) to reduce their termination charge by 25% and, then, to reduce charges by RPI-9% for the next three years (ending on March 31, 2002). In September 2001, Oftel also proposed to impose a further network charge cap on the termination rates of all four mobile operators by RPI-12% per year, for the period 2002-2006. In November 2001, The French NRA, ART, has imposed on Orange and SFR a similar mechanism that will reduce mobile interconnection charges by 40% in the period 2002-2004. In 1999, AGCOM, The Italian NRA, set a maximum value for the average Fixed/mobile termination charges of the two dominant mobile operators (TIM and Vodafone Omnitel). AGCOM is currently considering a one-off reduction to this maximum value, followed by further annual reductions by means of RPI-X cap for a period of three years, which should determine at the beginning of 2003 at least a 25% of charges reduction. The Dutch Regulatory Authority, OPTA, has reduced all mobile termination rates from December 2002 to April 2003 by 30% and is planning to bring them in line with actual costs by July 1st 2003.

The European commission's Eighth Implementation Report confirms this trend stating that: "For what concerns mobile termination, the NRAs have adopted a series of measures to regulate tariffs in line with the actual regulatory framework. In Austria the NRA has fixed mobile termination tariffs based on the principle of reasonable prices and on a cost accounting system. In some member states (Netherlands, Portugal and UK) the NRA has ordered a reduction in tariffs applied to mobile termination considering them too high and unreasonable, even in the absence of notification of mobile operators as having significant market power in the national interconnection market. In Finland three mobile have been ordered to bring their interconnection tariffs in line with their costs. In other member states, the NRA has imposed a reduction in mobile termination rates considering them a step towards the application of cost orientation, whereas in other countries (Belgium, Spain, France, Ireland, Italy, Sweden) the mobile operators have been designated as having significant market power in the national interconnection market and therefore are obliged to have cost oriented tariffs".

Latin America is undergoing a similar season of downward pressures to mobile termination rates as in the EU. Many regulators are already (Chile) or are being involved (Venezuela) in discussing the application of Long Run Incremental Cost or similar efficient operator cost figures in order to streamline mobile termination charges. Those who did not explicitly address cost orientation in their regulatory framework are explicitly enforcing operators to drive rates down (Perù) or own a market structure such that fixed operators bargaining power reduces termination rates (Bolivia, Brazil).

c) In most European and Latin American countries, the European Commission and the National Regulatory Authorities, are therefore already addressing the issue of the level of mobile termination tariffs.

d) US international carriers and European international carriers are in the same bargaining position with regards to termination rates to be paid to mobile operators since, as previously said, no discrimination is possible between national and international interconnection. Furthermore is unlikely that European mobile operators may abuse of their dominant position, considering the reduction of the termination charges granted by mobile operators in the past years, following competitive pressure and regulatory interventions. In the event that a European operator would be considered to abuse its dominant position, the EU Commission strictly monitors the situation as in the case of the Dutch incumbent telecommunications operator who received a statement of objections in the first term of 2002, further to a complaint by a US operator. The Commission suspected the Dutch operator of abusing its dominant position regarding the termination of telephone calls on its mobile network through discriminatory or unfair behavior. The case it still being upheld at EU Commission level.

e) US carriers are free to interconnect directly with European mobile operators for termination of US originated traffic or with any other operator (since the full liberalization of the European markets in 1998 there are many alternatives to the incumbent operator for terminating international calls) and bypass the traditional international operator of a specific country.

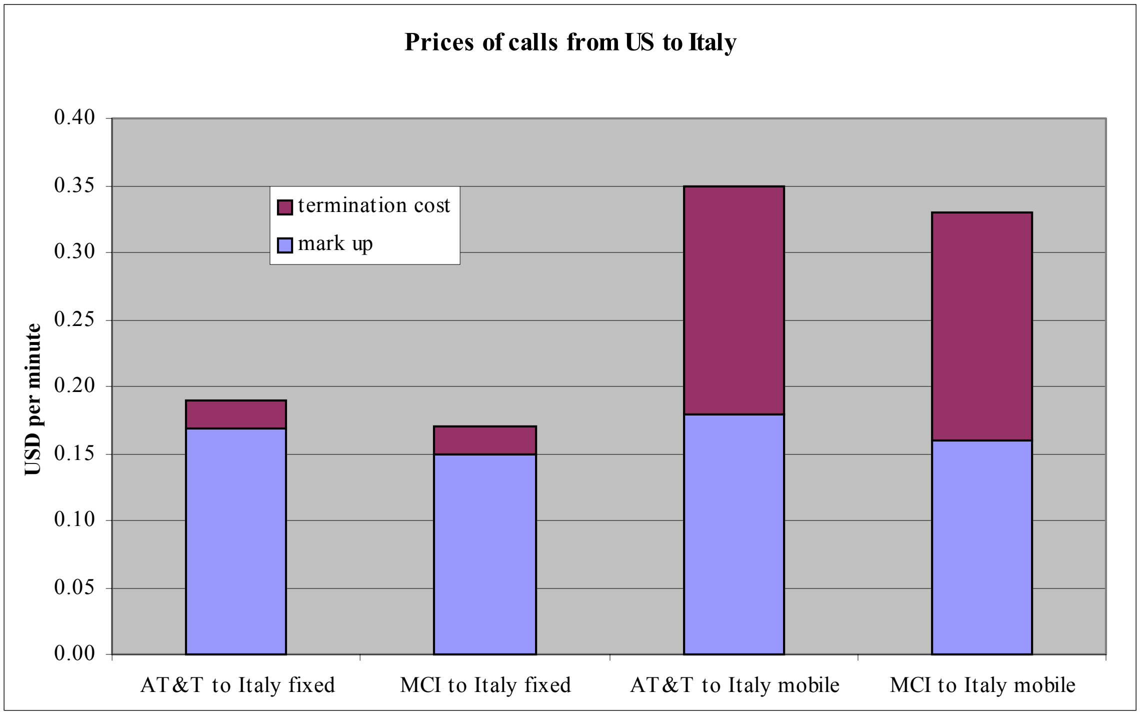
f) Being the level of mobile tariffs an issue that needs to be dealt with on a national level and not related to discrimination practices between US Carriers and non US carriers, we believe that any action the FCC might take in its jurisdiction would prove to be non effective. A possibility would be to issue a benchmark order similar to the one on International Settlement Rates for the maximum level of mobile termination tariffs that US carriers would be able to negotiate for bilateral agreements between US and foreign operators. Nevertheless, this would lead to US carriers refiling their outgoing traffic to mobile operators but not being able to obtain better conditions. In fact in competitive national mobile markets, such as the European, all the operators apply –often because of a legal and/or a regulatory provision -the same termination charges which are being progressively reduced and brought in line with their costs by NRAs, in a non discriminatory way. As a paradox, forcing US carriers to refile traffic terminating in one country (country A) to foreign mobile operators offering services in another country (country B) is clearly inconvenient. This would imply extra cost since US carriers would have to pay in addition to the mobile termination charge to the international fixed or mobile operator in country A, an additional transit fee to the operator in country B.

It is important to note that while the FCC benchmark order had a tangible effect on the revenues of operators to which it applied which were losing the traffic from US carriers and therefore the potential incoming revenues derived from it, in case of mobile foreign operators, a benchmark order would not harm the mobile operators which would in any case receive the same amount of revenue through other carriers.

g) This applies to countries, like Italy and other EU and Latin American countries, where:
   1. there is a calling party pays regime;
   2. there are rules which ensure non discrimination of interconnection conditions offered by dominant operators to international and national carriers;
   3. there is a liberalized telecommunications market both for fixed and mobile telecommunications;
   4. there is regulation in place which ensures cost orientation or regulatory controls over interconnection tariffs of dominant and – as in the case of Latin America- non dominant operators (both fixed and mobile);

h) In other countries where for example there is a monopoly or competition is still limited or there is a called party pays regime, and the regulation in place does not ensure a reduction trend of interconnection charges and non discrimination between national and international operators, it is important to encourage the application of consistent regulatory measures (to be fine tuned with other relevant features of national markets) aimed at promoting the application of fair and sustainable rates.
i) The level of prices of international calls to mobile phones is not only due to the price of the termination paid to the foreign mobile operator but also on the mark-up applied

by the US carrier to its termination costs. US carriers apply a mark up of more than 10 US cents on international calls to Italy, as shown on the following table[4].



5. Finally, we agree that US consumers should be made more aware of the cost of calling an international mobile phone, since few US carriers adequately advertise this issue. In many cases, on US carriers' website the cost of international calls to a specific country (ie. Italy) which is shown is that of a call to the fixed network and only in a small footnote at the end of the page it is written that in some cases mobile termination surcharges apply.

[4] Based on data for international calls published on www.att.com and www.mci.com. The prices include the monthly subscription of USD 2.99 for AT&T and USD 2.95 for MCI based on an assumption of 20 international calls per month per residential customer with average duration of 3 minutes.

5. **Foreign markets: comment on the state of competition in foreign markets as it relates to the ISP. Is competition increasing as rapidly as expected? In what % of countries is a government owned or controlled carrier the dominant provider or terminator? Is the ownership structure of the dominant provider relevant to this proceeding and to competition in general? Have recent problems in the worldwide telecommunications sector reduced the pace of liberalization internationally? Are these problems likely to slow privatization or lead to more consolidation and less competition?**

The FCC has originally implemented the ISP to prevent foreign carriers with market powers to negotiate different rates with each U.S. carriers in order to obtain high rates well above the costs of call termination.

Telecom Italia is a private company. The golden share owned by the government is under exam in order to be eliminated and in any case any utilization by the government would be considered an infraction by the European Commission.

The Italian market for international wholesale voice services is a liberalized market with no significant barriers to entry. Telecom Italia has reached International Traffic Agreements directly or thorough its affiliated company Telecom Italia of North America, with over twenty US carriers. Moreover, many US carriers have affiliated companies licensed in Italy and therefore can have access to national interconnection rates directly through Telecom Italia or through interconnection agreements with other national licenced operators both fixed and mobile. In the EU, the market for international carrier services is fully liberalised and that, with particular reference to Italy, Telecom Italia's regulatory obligations on the international market have been significantly reduced on the basis of the recognition of effective competition on 18 routes (including the Italy-USA route) and increasing competition on all the remaining routes. Also in the main EU countries regulatory obligations on the incumbent operator have been lifted or significantly reduced in consideration of the effective competition of the relevant market (eg. France, Germany and UK).

South American countries are progressively achieving full competition in the market of international voice services:

- In Chile International Services market is completely freed, operators are all 100% private. More than 30 operators are active in a purely competitive market. No particular access barriers are envisaged to enter the market. The only required demonstration is that equipments that are connected to the PSTN do not alter service quality.

- In Bolivia, one year after market opening, market forces are driving rates below FCC established levels and, as far as ISR is concerned, US carriers have requested

FCC to modify the status of traffic direction with Bolivia. Entel`s market share on termination service is about 75% and its infrastructure has been open to competing operators following current regulations.

- In Venezuela, one year after formal market opening, there are a few new international carriers even if competition is not increasing as rapidly as expected.

- In Argentina, the international market is completely liberalized. There are more than 20 operators currently competing for both incoming and outgoing international calls. The requisites to obtain a licence and to become a carrier are simple and non expensive and the rules for interconnection are public and applied to all operators without discrimination.

- In Perú long distance TLC services are totally private and completely liberalized. There are at least thirty active operators, utilizing prepaid cards, call by call and preselection and no particular restrictions exist to access the market.

- In Brazil, international long distance is characterized by the presence of a specialized incumbent operator (Embratel), the competition to which is now brought by several operators. The granting of a long distance license is not subject to abnormal restrictions.

In consideration of the above, the state of competition in foreign markets as it relates to the ISP has increased significantly and in some cases even more rapidly than expected. It appears therefore to be no need for the ISP rule at least for competitive markets such as EU and South American countries. It could be considered still necessary to apply such rules for foreign market such as African or Middle Eastern countries where the liberalization process is still under way.

As an example of a country in which the liberalization process has not been completed and therefore prices for international calls are being maintained artificially high, we would like to cite Turkey, where the monopoly of Turk Telekom for voice is expected to end only in the beginning of 2004. The interconnection agreement between Türk Telekom and national mobile operators in Turkey requires that, all international interconnection traffic (both outgoing and incoming) should be carried via the Türk Telekom network. This being the case, a national mobile operator is not able to negotiate with foreign operators for interconnection purposes. Within this framework, for the incoming calls from the international networks (including United States as well), Türk Telekom pays the national mobile operator the 30% of the amount of the interconnection revenue that it takes from the international operators as termination fee. As Türk Telekom does not specifically demonstrate the minute price that it takes from each country, it is hard to estimate the amount that comes specifically from the United States of America (but in average terms, Turk Telekom pays us 4,5USDcents/min as net termination rate for international calls). For the outgoing calls to the United States on the other hand, the national mobile operator pays to Türk Telekom the peak end-user price of calling a United States number (net app. 54 cents) and from that time on, it is under Türk Telekom's responsibility to carry the call and pay for the necessary interconnection fees to terminating operator. According to the price cap, the national mobile operators are submitted to, they are allowed to put a margin of 35% over this end-user tariff of Turk Telekom at most while setting their own end-user price.

Respectfully submitted,

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